



NUMBER 13-15-00585-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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GABRIEL THOMAS,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

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On appeal from the 319th District Court of  
Nueces County, Texas.

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## MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Garza and Longoria  
Memorandum Opinion by Justice Longoria**

Appellant Gabriel Thomas was charged with burglary of a habitation, a second-degree felony. See TEX. PENAL CODE ANN. § 30.02 (West, Westlaw through 2015 R.S.). In one issue, Thomas argues that the sentence he received was more severe than necessary to accomplish the objectives of the Texas Penal Code. We affirm.

## I. BACKGROUND

Appellant was charged with burglary of a habitation on September 3, 2013. See *id.* On December 17, 2013, the trial court signed an order placing Thomas on deferred adjudication probation for a term of four years. On July 29, 2015, the State filed a motion to revoke appellant's probation, alleging that Thomas refused to agree to modified probation conditions that would have required him to participate in the SAFPF drug treatment program. On November 9, 2015, the trial court revoked Thomas's probation, adjudicated him guilty of the underlying offense, and sentenced him to four years in the Texas Department of Criminal Justice—Institutional Division. This appeal followed.

## II. CONSTITUTIONALITY OF SENTENCE

In his only issue on appeal, Thomas claims that the sentence imposed by the trial court violated his constitutional right to receive a sentence which is not more severe than necessary to accomplish the objectives in the Texas Penal Code.

To preserve a complaint of improper sentencing, a criminal defendant must make a timely, specific objection to the trial court or raise the issue in a motion for new trial. See *Trevino v. State*, 174 S.W.3d 925, 928 (Tex. App.—Corpus Christi 2005, pet. ref'd); TEX. R. APP. P. 33.1(a). Thomas did not object when the trial court imposed the sentence and he did not complain of the sentence in any post-trial motions. Thus, Thomas failed to preserve his issue for appeal. See *Trevino*, 174 S.W.3d at 928.

Even absent the preservation issue, we observe that Thomas received a sentence within the statutory range for a second-degree felony. See TEX. PENAL CODE ANN. § 12.33 (the range for a second-degree felony is between two and twenty years). A punishment that falls within the statutory range is per se not excessive. See *Trevino*, 174 S.W.3d at 928. Therefore, we overrule Thomas's sole issue.

### III. CONCLUSION

We affirm the trial court's judgment.

Nora L. Longoria  
Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed the  
30th day of June, 2016.